UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/79/Add.82
19 November 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Senegal

1. The Committee considered the fourth periodic report of Senegal (CCPR/C/103/Add.1) at its 1618th and 1619th meetings, on 21 and 22 October 1997, and subsequently adopted 1/ the following comments:

A. Introduction

2. The Committee expresses its appreciation for the opportunity to resume its dialogue with the State party. While noting that the fourth report has been presented in a timely manner and provides some useful information on the constitutional and legislative norms applicable in Senegal in the field of human rights, the Committee reiterates its previous comment on the State party's third periodic report, regretting the lack of information in the document on implementation of the provisions of the Covenant in practice. At the same time, the Committee appreciates the detailed and updated information provided orally by the delegation in the course of its consideration of the report.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes with concern that continuing violence and unrest in the region of Casamance have resulted in persistent violations of rights guaranteed by the Covenant.

1/ At the 1640th meeting, held on 5 November 1997.

4. The Committee further notes the continued existence in the State party of laws and customs, in particular those affecting equality between men and women, which impede the full observance of the Covenant.

C. Positive aspects

5. The Committee observes with satisfaction that the State party has strengthened the status of the Senegalese Human Rights Committee (law of 10 March 1997), and in particular has ensured participation by non-governmental organizations, as well as its capacity to act as an advisory body for dialogue, consultation and promotion of human rights. The activities of the Ombudsman (Médiateur) are also welcomed.

6. The Committee appreciates the creation of the Interministerial Committee on Human Rights and Humanitarian International Law (Comité inter-ministériel des droits de l'homme et du droit international humanitaire) by Decree of 2 July 1997, as well as the recent change in the Electoral Code leading to the establishment of a body to monitor and supervise elections.

7. The Committee further welcomes the efforts to overcome the problem of illiteracy and the activities of the Ministry on Woman, Children and Family which has initiated plans of action in collaboration with non-governmental organizations. The Committee also appreciates efforts made to enhance the public's awareness of women's issues.

8. In the field of law reform, the Committee notes with appreciation the criminalization of torture in the Penal Code.

9. In the context of the right to remedies for violations of human rights, the Committee notes with interest that an individual may appeal to the Constitutional Council to challenge the constitutionality of proceedings before the Council of State or the Court of Cassation. The Committee welcomes the willingness of the Government of Senegal to comply with the Views of the Committee in the case of Koné v. Sénégal (Communication 386/1989) and to provide for a remedy acceptable to the author, namely an award of 500,000 francs, a plot of land and adequate medical treatment, all implemented just before the consideration of the report before the Committee.

10. In relation to the State party's accession to various international human rights instruments, the Committee welcomes its acceptance of the primacy of international human rights standards over national legislation.

D. Subjects of concern and the Committee's recommendations

11. In the context of events in Casamance, the Committee expresses concern at allegations it has received of indiscriminate killing of civilians by the army and police, of disappearances, and of ill-treatment and use of torture against persons suspected of being supporters of the Mouvement des forces démocratiques de Casamance (MFDC). Therefore:

The Committee recommends that measures be taken to ensure the full observance of articles 6 and 7 by military personnel and police, and the effective implementation in practice of article 7 of the Covenant

vis à vis people suspected of being MFDC sympathizers. The Committee also recommends that, especially because of the distance from the capital and the region's proximity to neighbouring States, consideration be given to establishing an independent mechanism to monitor and investigate human rights abuses in Casamance, and that persons found responsible for violations of rights be brought to justice and the victims compensated. The Committee also recommends further training in human rights for all security and law enforcement personnel.

12. The Committee regrets that certain traditional cultural attitudes with respect to women are not compatible with their dignity as human beings and continue to hamper their equal enjoyment of rights embodied in the Covenant. The practice of polygamy, which is incompatible with articles 2(1), 3 and 26 of the Covenant, is of particular concern. The Committee continues to be especially disturbed at the persistent custom of female genital mutilation, which violates articles 6 and 7 of the Covenant, and the high rate of maternal mortality which results from that practice, from early child birth and from the strict prohibition of abortion. It recommends that judges and lawyers make use of ordinary criminal law provisions to deal with instances of female genital mutilation until a specific law for this offence, the adoption of which the Committee strongly supports, is enacted. In this regard:

The Committee encourages the State party to launch a systematic campaign to promote popular awareness of persistent negative attitudes towards women and to protect them against all forms of discrimination; it urges the State party to abolish practices prejudicial to women's health and to reduce maternal mortality. The Committee recommends that the State party indicate, in its next periodic report, the outcome of proposals on the matter of polygamy made by the Working Group on the National Action Plan for Senegalese Women (1996-2000). In the light of these concerns, the Committee further recommends that the State party bring its legislation, including family and inheritance laws, into conformity with articles 2(1), 3, 6, 7, 23 and 26 of the Covenant.

13. Although the Penal Code provides legal redress for offences such as assault, the Committee is concerned at the persistence of violence against women, including spousal abuse. Therefore:

The Committee recommends that specific attention be given in the law to the problem of domestic violence, and stresses the need for information and education campaigns to prevent and combat any form of physical violence against women.

14. The Committee notes that the criteria enabling a judge to hold an arrested person in pre-trial detention are not defined under the law. It expresses its concern at the extensive discretionary power given to judges in such situations. Furthermore, in cases of offences against the security of the State, the Committee notes with concern the provisions of the Code of Criminal Procedure allowing special detention in police custody, and in particular allowing the Public Prosecutor to authorize extension of the length of detention. The Committee is also concerned about the lack of access to counsel by detainees. Therefore:

The Committee recommends that the State party set out in its Code of Criminal Procedure criteria establishing grounds on which persons awaiting trial may be held in detention which are in conformity with article 9 (3) of the Covenant. Furthermore, the Committee recommends the repeal of provisions dealing with special detention in cases of offences against the security of the State, or the provision of further legal safeguards in such cases.

15. Although measures have been taken to improve the condition of prisoners, the Committee expresses its concern at recurring problems of overcrowding and poor health and sanitary conditions in many prisons, which are incompatible with article 10, paragraph 1, of the Covenant. Therefore:

The Committee recommends that measures be taken to reduce overcrowding and to upgrade prison facilities as quickly as possible.

16. The Committee is concerned over the lack of full enjoyment of freedom of association, in particular the fact that foreign workers are barred from holding official positions in trade unions, and that trade unions may be dissolved by the executive. Therefore:

The Committee recommends that the State party take all necessary measures to permit foreign workers to hold official positions in trade unions, and provide guarantees and legal redress to trade unions, in accordance with article 22 of the Covenant, against dissolution by administrative measures.

17. The Committee expresses its concern at the statement in the report that "there are no minorities in Senegal", and at the failure of the State party to provide information on the recognition and protection of religious and ethnic minorities in Senegal. In that regard:

The Committee recommends that the State party take legal and practical steps to recognize and protect religious and ethnic minorities, with a view to ensuring the rights guaranteed under article 27 of the Covenant. The Committee further suggests that the Government of Senegal take into consideration the Committee's General Comment No. 23 on this matter.

18. The Committee recommends that full and comprehensive information on the implementation of the provisions of the Covenant in law and in practice, as well as on factors and difficulties which affect its implementation, be incorporated in the State party's next periodic report.

19. The Committee draws the attention of the Government of Senegal to the provisions of the guidelines regarding the form and contents of periodic reports from States parties, and requests that its next periodic report, due on 4 April 2000, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Senegal and in all recognized languages.

UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/79/Add.83
19 November 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Jamaica

1. The Committee examined the second periodic report of Jamaica (CCPR/C/42/Add.15) at its 1622nd to 1624th meetings, on 23 and 24 October 1997, and subsequently adopted 1/ the following comments:

A. Introduction

2. The Committee welcomes the second periodic report submitted by the State party and appreciates the delegation's readiness to resume its dialogue with the Committee, although it deplores the delay of more than 15 years in reporting. The Committee regrets that while the report provided useful information on the general legislative framework of Jamaica, it did not address consistently the actual state of implementation of the Covenant, nor did it always address, on an article-by-article basis, difficulties encountered in the course of its implementation.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee is aware of the difficult economic situation of Jamaica during much of the period covered by the second periodic report, as well as of the high rate of crimes of violence.

1/ At its 1641st meeting held on 5 November 1997.

C. Positive aspects

4. The Committee appreciates that in the envisaged review of the Jamaican Constitution, any provisions in contradiction with the Covenant which might appear from the application of section 24 of the present Constitution, would be eliminated. It expresses the hope that the recommendation of the Constitutional Commission to the effect that the new Bill of Rights should explicitly refer to prohibition of discrimination on the grounds of sex will be implemented as part of this legislation.

5. The Committee welcomes the establishment in 1993 of the Police Public Complaints Authority, which allows Jamaican citizens to seek redress if they have been abused by police officers, and the requirement for this body to report publicly on its activities. The Committee further welcomes the establishment of a Public Commission of Inquiry into the prison disturbances which occurred in several correctional facilities in August 1997, resulting in the loss of life of 16 inmates. At the same time, the Committee wishes to emphasize that the results of the investigations of and the action taken by these bodies should be disseminated as widely as possible and made available to the Committee.

6. The Committee appreciates that the imposition of capital punishment has been reviewed by the Jamaican authorities during the period under review, leading to the adoption of the Offences against the Person (Amendment) Act, 1992 and the concomitant adoption of procedures for legal representation, classification of offences, minimum periods to be served and an appellate system.

7. The Committee appreciates that on the basis of the classification of capital offences under the Offences against the Person (Amendment) Act, judicial decisions and a number of Views adopted by the Committee under the Optional Protocol, numerous death sentences were commuted, leading to a considerable reduction in the number of inmates under sentence of death.

8. The Committee welcomes the fact that draft legislation is currently being finalized with a view to improving the system of legal aid in Jamaica: under the proposed system, legal aid would be extended to all aspects of criminal proceedings and appeals, to constitutional motions, to prerogative writs and to the writ of habeas corpus, as well as to other civil proceedings. The Committee expresses the hope that the new Legal Aid Bill will be passed and will enter into force as soon as possible, and that sufficient resources will be allocated for its effective operation.

9. The Committee welcomes the current implementation of a programme for the modernization and the rebuilding of the prison estate. On the basis of the information provided by the delegation, such projects as have already been approved and are being implemented, such as the long-overdue modernization of St. Catherine District Prison and the building of a facility to replace the outdated Tower Street Adult Correctional Centre, will improve conditions of detention, overcrowding of prisons and other unsatisfactory conditions. The Committee welcomes the intention expressed by the delegation to amend administrative regulations listing objects that inmates, whatever their

sentence, may keep in their possession, to the effect that a prisoner will be allowed to retain in his cell correspondence and will be assured access to legal documents relating to his case.

D. Subjects of concern and the Committee's recommendations

10. The Committee notes with the utmost regret Jamaica's notification of denunciation of the Optional Protocol. Unless withdrawn, this denunciation will become effective on 23 January 1998. The Committee affirms that:

(a) Views of the Committee already adopted on communications under the Optional Protocol will retain their validity and will require implementation;

(b) Communications already pending, or submitted before 23 January 1998, will not be affected by Jamaica's notification and will be considered by the Committee in due course;

(c) Jamaica will continue to be bound by the provisions of the Covenant, and be subject to other monitoring functions of the Committee.

11. The Committee considers that the Governor-General's notification of 7 August 1997, unilaterally imposing timetables for the examination of communications under the Optional Protocol by the Committee, cannot be invoked as justification for any measure that would deviate from the Covenant, the Optional Protocol, or requests by the Committee for interim measures of protection.

12. The Committee is concerned at the incidence of domestic violence against women. Therefore:

The Committee recommends that increased efforts be made to sensitize the population to the need to respect women's dignity and that legislation should ensure ready access to remedies for violations of women's human rights, and that social and educational programmes be pursued to ensure the upholding of womens' rights by way of abolishing all discrimination.

13. The Committee notes with concern that serious deficiencies persist in the administration of the State party's prison system. These include conditions of imprisonment which the Committee considers incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners and article 10 of the Covenant; attention should be paid to the lack of sanitary facilities, lighting in cells, adequate diet, adequate training of prison staff, adequate facilities for visits of convicted prisoners (by relatives and by their legal representatives) and recurrent ill-treatment of inmates. In this regard:

Effective means of redress, without reprisals, should be available for detainees and prisoners regarding complaints of ill-treatment by police or prison warders; the Boards of Visitors should examine all such complaints and report to the prison governor. The Committee recommends that an independent prison inspectorate be established which would report publicly on its findings.

14. While noting current endeavours to reform the system of legal aid, the Committee remains concerned about the state of current legal aid representation. This is particularly disturbing for cases involving capital punishment, where unavailability of legal aid amounts to a violation of article 6 juncto article 14 of the Covenant. Therefore:

> The Committee urges the State party to monitor on a continuing basis the availability and quality of legal aid representation, and to ensure that experienced counsel is assigned to individuals accused of capital and other serious offences. The Committee emphasizes that adequate remuneration of lawyers acting under the Poor Prisoners' Defence Act at all stages of arrest and subsequent proceedings would greatly assist in providing a proper defence of clients in a proper manner. Legal aid should be available for obtaining the presence of defence witnesses for the purposes of trials.

15. The Committee is deeply concerned about the fact that the Flogging Regulation Act, 1903 and the Crime (prevention of) Act, 1942 are still in force, which provide for and regulate corporal punishment both as a penalty for certain crimes and as a penalty for breach of prison rules of other regulations. In this regard:

> The Committee recommends that both Acts be repealed, as they are contrary to article 7 of the Covenant.

16. The Committee regrets the lack of published information about the alarmingly high incidence of the use of firearms by the police and security forces. Therefore:

> The Committee urges the State party to investigate all such incidents and to make available to the public the outcome of such investigations; in particular, an inquiry should be completed on the Tivoli Gardens incident in March 1997 and its results published.

17. With respect to the system of administration of justice and the conduct of criminal trials, especially in capital cases, the Committee is concerned that, while there has recently been some progress in reducing delays in hearings of cases at all stages of judicial procedure between the initial charge and the final appeal, further efforts should be made to reduce delays in the hearing of cases. This applies in particular to the delays between dismissal of capital appeals by the Court of Appeal of Jamaica and the hearing of a petition for special leave to appeal by the Judicial Committee of the Privy Council. Therefore:

> The Committee recommends that appropriate legal provisions be adopted to ensure prompt issue of a reasoned judgement by the Court of Appeal.

18. The Committee is concerned that the State party has failed to adhere strictly to article 9, paragraph 3, of the Covenant and to domestic statutory time limits on pre-trial detention. Therefore:

The Committee urges that such time-limits be closely observed, so as to reduce the opportunity for beatings and other forms of police brutality such as have been alleged.

19. The Committee is concerned that not all cases of death at the hands of the police or security forces are subject to a coroner's inquest. Therefore:

The Committee emphasizes that all such deaths should be inquired into and that inquests ordered under the Coroners Act which are adjourned pending the consideration by the Department of Public Prosecutions of potential charges must be reopened if no prosecution ensues.

20. The Committee has noted the delegation's information that wire-tapping remains an exceptional administrative measure. It considers that current administrative rules are insufficient to secure compliance with article 17 of the Covenant. Therefore:

The Committee urges the Jamaican authorities either to discontinue wire-tapping or to adopt precise legislation governing its administration, which should include appropriate mechanisms for judicial oversight.

21. The Committee draws the attention of the Government of Jamaica to the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Jamaica.